

**BEFORE THE COMMISSIONER OF
POLITICAL PRACTICES**

In the Matter of the)	
Complaint Against the)	SUMMARY OF FACTS
Montana Chamber of Commerce)	AND
Regarding Its Activities)	STATEMENT OF FINDINGS
In Opposition to I-121)	
And I-125)	

On March 2, 1999, John Heffernan, on behalf of Montana Common Cause (“Common Cause”), filed a complaint with the Montana Commissioner of Political Practices alleging that the Montana Chamber of Commerce (“the Chamber”) violated Montana’s campaign finance reporting and disclosure laws by failing to properly report in-kind contributions and/or in-kind expenditures made in opposition to Initiative 121 (“I-121”) and Initiative 125 (“I-125”) during the 1996 elections.

INTRODUCTION AND BACKGROUND

The two initiative measures at issue in this complaint appeared on the general election ballot in November of 1996. I-121 would have gradually raised Montana’s minimum hourly wage from \$4.25 to \$6.25 by the year 2000, unless a higher minimum wage was required by federal law. Montana voters rejected I-121 in the 1996 election. I-125 was a measure prohibiting direct corporate spending on ballot issues, except by non-profit corporations not controlled by for-profit companies. I-125 also set voluntary spending limits for ballot issues. Montana voters passed I-125 in the 1996 election. The Chamber opposed passage of both initiatives.

After the passage of I-125 curtailing corporate contributions to ballot issues, the Chamber, among other parties, brought suit against the then-Commissioner of Political

Practices, Ed Argenbright, alleging that I-125 was unconstitutional because it infringed upon corporate rights to free speech. See *Montana Chamber of Commerce, et al., v. Ed Argenbright*, No. 97-6-H-CCL (D. Mont. Oct. 20, 1998). After trial, the U.S. District Court for the District of Montana concluded that I-125 was unconstitutional. The decision has been appealed to the U.S. Ninth Circuit Court of Appeals.

In the course of the I-125 trial, David Owen (Owen), then president of the Chamber, testified and represented through documents that implementation of I-125 would greatly inhibit the Chamber's ability to actively support or oppose ballot initiatives. His testimony regarding the Chamber's active role in opposing I-121 and I-125 led Common Cause to conclude that the Chamber had not accurately reported in-kind contributions made to the principal political committees that opposed these initiatives. Common Cause's complaint alleges that Owen's testimony in the I-125 trial indicates that the Chamber did not properly report in-kind contributions and/or expenditures made in opposition to I-121 and I-125.

The Chamber contends that it fulfilled the reporting requirements as it understood them at the time (in 1996), and that it amended its reports when it realized they might be erroneous (in 1998). The Chamber further contends that the Commissioner's 1998 decision *In re Complaints Against Montanans for Common Sense Water Laws/Against I-122* clarified the in-kind reporting requirements for ballot initiatives, which it alleges were vague and confusing prior to that clarification.

During the investigation of the Chamber's activities in this matter, it became apparent that the Chamber's actions in opposing I-121 were intricately intertwined with the actions of several other core groups and individuals who opposed I-121. It also

became apparent that these interrelated core groups and individuals may have failed to properly report contributions and expenditures made to oppose I-121. Consequently, the investigation of the Chamber's actions was expanded to determine whether the principal committee formed to oppose I-121, the Coalition to Protect Small Business Jobs -- Opposing I-121 ("Coalition Committee"), the Montana Retail Association ("Retail Association"), the Montana Restaurant Association ("MRA"), the National Restaurant Association ("NRA"), the Montana Innkeepers Association ("Innkeepers"), the Montana Food Distributors Association ("Food Distributors"), the National Federation of Independent Business ("NFIB") and certain officers employed by these entities failed to timely and accurately report significant in-kind and monetary contributions and expenditures made to oppose I-121.

SUMMARY OF FACTS

1. Common Cause and the Chamber represented opposing interests in the I-121 and I-125 campaigns. Common Cause supported the initiatives while the Chamber opposed them.

2. I-121 (proposing to increase Montana's minimum wage) failed in the November election of 1996. I-125 (limiting corporate contributions to campaign initiatives) passed in the election of 1996.

The Campaign to Defeat I-121

3. Coordinated and organized efforts to defeat I-121 began as soon as the proposed minimum wage initiative was filed with the Secretary of State in August of 1995 (I-121 initiative language was approved by the Attorney General on September 14, 1995). The August 1995 Retail Association newsletter announced the filing of the

minimum wage initiative and described the proposed initiative as an “ominous idea and one that needs to be dealt with by all businesses.” The Retail Association’s Executive Vice President, Brad Griffin, promised that he would be sending out information on the minimum wage initiative “in every newsletter between now and next November.”

4. The Chamber’s October 11, 1995 annual meeting minutes indicate that President Owen gave a report on I-121 and described the Chamber’s historical opposition to increasing Montana’s minimum wage. Several Chamber board members expressed a desire to meet with proponents of I-121 and to review the Chamber’s position before voting to oppose the initiative. Owen indicated to the Chamber that “work had begun on a campaign to oppose the initiative and the Chamber had been part of that work.”

5. The Retail Association’s November 1995 newsletter announced that the Retail Association would be “meeting with a coalition of business groups on October 24 [1995] to discuss our strategy.” The same newsletter stated that retailers “must be willing to commit \$100,000.00 collectively to join the coalition fighting the wage increase.”

6. The Innkeepers’ Board met on November 5, 1995 and noted that the Innkeepers have “long opposed legislative efforts to increase the state minimum wage due to its significant economic impact on business.” The Innkeepers passed a motion to prepare a position statement opposing I-121 and to “work with others to oppose the initiative.”

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7. Chamber Board meeting minutes for January 25 and 26, 1996 indicate that the Chamber heard from both proponents and opponents of I-121 before taking the following action:

After the presentation [on I-121] it was moved and seconded to oppose the initiative petition. Passed with one vote against. It was moved and seconded to be pro-active on the minimum wage position. Passed unanimously. David (Owen) will develop a statement which will be sent to all Board members....

8. Riley Johnson, NFIB's Montana Director, urged the Chamber Board to oppose I-121 on January 26, 1996. Mr. Johnson advised the Chamber that "NFIB stands firmly in the camp of opposing...[I-121] and hopes the Montana Chamber of Commerce will join us in our efforts." Mr. Johnson also provided the Chamber Board with the results of an NFIB member poll showing that 70% of NFIB's members opposed I-121.

9. The Chamber's Executive Board voted to approve the position statement opposing I-121 by telephone conference call on February 20, 1996. Minutes of the meeting indicate that it was "generally agreed that the Chamber wants to be pro-active and provide a leadership role...[on I-121]."

10. The Chamber's February 22, 1996 newsletter announced the Chamber's opposition to I-121. The front page article noted that the Chamber had met with proponents of I-121 before voting to oppose the initiative. The same article indicated that the Chamber's Board had "approved a longer position paper on the minimum wage which is available to any Chamber member" and listed the six major reasons why I-121 should be defeated.

11. Chamber newsletters in 1996 were sent to approximately 770 members and, in keeping with longstanding tradition, to nonmembers such as elected officials, other state officials, associations and prospective members. The Chamber estimates that 40 to 50 of its newsletters were mailed unsolicited to nonmembers in 1996.

12. The Retail Association's March 1996 newsletter contained "points to ponder" about I-121. The newsletter also announced that the Montana Restaurant Association ("MRA") had become a member of the Retail Association. Brad Griffin served as the Executive Vice President of both the Retail Association and the MRA during the campaign against I-121. As the Executive Vice President for the MRA, Griffin also served as the National Restaurant Association's ("NRA") Montana coordinator.

13. On March 4, 1996, the NRA mailed Griffin and the MRA a media kit to be used to "organize a media campaign in opposition to an increase in the starting wage (or minimum wage) in your state." The memorandum accompanying the media kit advised the MRA that the NRA was continuing to develop statistical support, arguments and other material to be used in opposing a minimum wage increase.

14. On March 5, 1996, the NRA mailed Griffin and the MRA information, articles and charts on union activity and ballot issues to increase the minimum wage.

15. The NRA sent a memorandum to Griffin and the MRA on March 8, 1996 announcing that the NRA had set up an entire campaign team to provide services to those states facing minimum wage increase initiatives. The memo states that the NRA has a pollster, media consultant, media buyer, campaign strategist, a writer's group and third party advocates that will be available to Griffin and the MRA to defeat the minimum wage initiative in Montana. The memo announces that NRA's campaign team will

conduct test focus groups in Maryland and benchmark research in Montana and the other states facing minimum wage increase initiatives.

16. By letter dated March 14, 1996, Griffin apologized to Owen for missing the last coalition meeting but advised Owen that the NRA Board has “made I-121 a top priority.” Griffin tells Owen that the NRA “has hired an entire campaign team to assist... [Montana’s] efforts.” The campaign team, according to Griffin, is comprised of a pollster, media consultant, media buyer, campaign strategist and a writer’s group. Griffin tells Owen that the NRA campaign team will be arriving in Montana to conduct message testing and:

David, the important thing to remember is that this group has been directed to assist the state’s efforts. They will serve at our pleasure so we will have total control over their activities while they are in Montana. They will be contacting me to discuss their arrival time. I would like you and Stuart to join me in the meeting. I don’t know when that is yet.

17. A March 25, 1996 memorandum from the NRA to Griffin and the other NRA state coordinators facing minimum wage increase initiatives clarifies “what exactly the NRA is providing to the state associations for the upcoming ballot initiative fights....” The NRA memo indicates that:

A. Presidential nominee Bob Dole’s pollster, Toni Fabrizio of Fabrizio, McLaughlin & Associates (hereinafter “Fabrizio”), was hired as the NRA’s pollster to conduct a four-phase polling analysis and tracking program in Montana and the other states facing minimum wage initiatives. The NRA retained Fabrizio to perform pre-survey focus groups, benchmark surveys, post-survey focus groups and quantitative tracking.

B. The NRA retained Brian Lunde and George Burger of Decision Management, Inc. (“Decision Management”), to serve as campaign strategists. The NRA hired Decision Management to provide general political consulting and advice, state assessments (including opposition research and intelligence gathering), campaign planning, campaign budgeting, vendor recommendations and state oversight and evaluation. Decision Management was paid a minimum management fee of \$10,000 per month to provide political consulting services to the NRA, the Montana Coalition Committee and political committees in other states on minimum wage increase issues. The NRA made monthly payments to Decision Management beginning on March 25, 1996 and ending in November of 1996.

C. The Washington, D.C. media advertising firm of Gannon, McCarthy and Mason, Ltd. (“Gannon”), was hired by the NRA to prepare advertising opposing minimum wage increase initiatives in Montana and other states in March of 1996. Gannon was paid a minimum retainer of \$5,000 per month. The NRA’s first payment to Gannon was made on April 11, 1996 (for March 1996 services) and the final payment was made on December 18, 1996.

D. Multi-Media Services, Inc. (“Multi-Media Services”) of Alexandria, Virginia was hired by the NRA to purchase and place I-121 media advertising in Montana during the 1996 campaign against I-121.

18. A March 26, 1996 memorandum from George Burger of Decision Management to Griffin describes additional services to be provided by Decision Management on behalf of the NRA. For an additional cost, Decision Management would coordinate and manage vendors, hire and manage staff and oversee the

implementation of the campaign plan on a daily basis. In addition, Mr. Burger indicates that Decision Management has hired a media consultant to “write and produce ads for specific state campaigns based on specific state research.”

19. Decision Management faxed Griffin and Owen a “Montana Research Request Form” on March 26, 1996. The form included a listing of 11 items to be researched including past election returns, campaign finance reports filed in Montana, news clippings about opponents and proponents of I-121 and information regarding Montana's largest employers, the membership of MRA and related information.

20. The Innkeepers' Board voted to “actively oppose” I-121 at its April 14, 1996 meeting. The Innkeepers also decided that they would not be involved in other initiative campaigns and that the Innkeepers would only “monitor other ballot issues.”

21. On April 17, 1996, the NRA sent Griffin and the MRA a memorandum containing information, articles and charts on minimum wage ballot initiatives throughout the nation.

22. George Burger of Decision Management traveled to Montana on April 22, 1996 to meet with the MRA, NFIB, the Chamber, the Food Distributors and the Innkeepers. In a May 6, 1996 memorandum to the MRA describing his assessment of the Montana core group opposing I-121, Burger states that the core group “has the potential to be very strong” because they worked together before on the 1988 Bottle Bill and the cigarette tax initiative. Burger noted that the core group is “smaller than we'd like” and will be short of money considering other Montana races and issues in 1996. Burger recommended expanding the core group and listed specific associations to be solicited. Burger also noted that at least eight membership associations had declined

an invitation to join the coalition opposing I-121. Burger made six recommendations to the NRA, including the following:

A. The Chamber must “take the lead” on I-121 because the Chamber is “the best organized.”

B. The NRA must provide “seed money to get the Montana campaign started.”

C. Because only a modest amount of money could be raised in Montana, “most of the funding to defeat the minimum wage proposal must come from outside the state.”

23. The Chamber Board met on April 24 and 25, 1996. Owen provided each director with a copy of the Chamber’s position paper opposing I-121. Owen also announced that a coalition “has been formed which includes the Retail Association, NFIB, Innkeepers, Food Distributors and the Montana Chamber.” Owen also indicated that the coalition had recently met with the NRA and the NRA was conducting a statewide poll on I-121.

24. The NRA’s pollster, Fabrizio, conducted a survey of political attitudes in Montana on May 2-4, 1996. Included in Fabrizio’s polling were questions about I-121. Four hundred Montanans were polled by Fabrizio. The NRA paid Fabrizio \$100,790.00 for polling on minimum wage issues in Montana, Arizona, Idaho, Missouri and Oregon on May 14, 1996. the Montana portion of Fabrizio’s poll cost \$15,200.00.

25. Decision Management’s May 6, 1996 memorandum discussing George Burger’s April 22, 1996 visit to Montana and recommendations concerning the I-121 campaign was distributed by Griffin to Owen (the Chamber), Stuart Doggett

(Innkeepers' Executive Director), Bill Stevens (Food Distributors' Executive Director) and Johnson (NFIB) on May 7, 1996. Griffin's memo indicates that if he gets poll results before "next Monday's 8:30 a.m. meeting," he will forward the results. These individuals and groups comprised the core group responsible for developing and implementing the campaign against I-121 from the beginning. Owen, Griffin, Johnson, Doggett and Stevens met regularly and often beginning in October of 1995 to develop and implement the campaign against I-121.

26. George Burger of Decision Management faxed 21 pages of Fabrizio's poll results to Griffin and the MRA on May 7, 1996.

27. In a letter dated May 31, 1996, Griffin thanked the NRA Board for putting "their money where their mouth is in such a generous manner." Griffin also thanked the NRA for the assistance received from George Burger of Decision Management and Chris Wilson of Fabrizio. The letter announced the following decisions made at a meeting the previous day with the Chamber, the Innkeepers, NFIB and the Food Distributors:

A. The core group decided to name the principal committee to be formed to oppose I-121 "the Coalition to Protect Small Business Jobs - - Opposing I-121."

B. The core group adopted a proposed but modest budget of \$62,000.00 for the principal committee's operations.

C. The leading candidate to run the principal committee's campaign against I-121 was Mike Micone, former Montana Commissioner of Labor.

28. A May 31, 1996 memo from Fabrizio to Decision Management reports the Montana minimum wage survey results. Copies of the Fabrizio survey results memo were distributed to Owen and Griffin on or about June 3, 1996.

29. On June 4, 1996, Griffin, Owen and Doggett were appointed by Secretary of State Mike Cooney to the committee preparing Voter Information Pamphlet arguments against I-121. The Voter Information Pamphlet is distributed to Montana's electors by the Secretary of State before each general election. Griffin, Owen and Doggett performed these services at the request of the Secretary of State from June 1996 through August 2, 1996.

30. On June 10, 1996, the president of the NRA sent Griffin and the MRA "a contribution ('seed money') for your coalition's effort in the upcoming ballot initiative battle." The NRA check was made out to the Coalition Committee.

31. The Coalition Committee filed its statement of organization (C-2 form) on June 20, 1996. The following individuals were named as officers for the Coalition Committee:

A. Owen was designated as the treasurer and his mailing address and work phone number were the same as the Chamber's address and phone number.

B. Griffin was designated as the chair and his mailing address and phone number were the same as the address and phone number for the Retail Association.

C. Doggett was designated as co-chair and his mailing address and phone number were the same as the address and phone number for the Innkeepers.

D. Johnson was designated as the secretary and his mailing address and phone number were the same as the address and phone number for NFIB.

32. The Coalition committee officers met with Mike Micone to discuss retaining Mr. Micone to run the campaign against I-121 on June 19, 1996. Owen and Micone signed a letter of agreement on June 21, 1996 in which Micone agreed to provide contract services to the Coalition Committee in return for payment of \$5,000.00 plus expenses. Micone also served as the Coalition Committee's deputy treasurer.

33. By letter dated June 21, 1996, the office of the Commissioner of Political Practices advised Mr. Owen that it had received the statement of organization for the Coalition Committee. The letter from the Commissioner's office also advised the Coalition Committee as follows:

Please also be aware that all expenditures and contributions, both monetary and in-kind, with respect to this issue (such as the petition approval process) that may have occurred before the committee was formed, need to be recorded and eventually reported.

34. The Coalition Committee also hired Gloria Paladichuk to assist in running the campaign against I-121. Ms. Paladichuk was paid \$8,076.33 in salary and expenses for her services to the Coalition Committee.

35. The Coalition Committee's offices were located in the Chamber's offices. The Coalition Committee paid the Chamber \$250.00 per month rent and a total of \$583.77 for telephone, copies, office supplies and other miscellaneous office expenses for the period of July 1 through November of 1996.

36. The summer 1996 Innkeepers newsletter declared that the Innkeepers have "been an active participant" in the Coalition Committee. The same article states that the Innkeepers' executive committee, "in keeping with action taken during our 1995

General Membership Meeting, has agreed that we must continue working with other business associations, and individual business owners, to oppose I-121.”

37. A July 3, 1996 memo from Chris Wilson of Fabrizio to Decision Management and the NRA confirms that Montana focus groups will be convened in Great Falls, Montana on July 17, 1996. The memorandum also contains a draft schedule for the Montana campaign against I-121 detailing dates for media purchases, press announcements, literature drops, polling and mailing for the period from July 8 through November 5, 1996. The memorandum also contains the proposed Montana budget for the I-121 campaign discussed in Summary of Fact 27 of this decision.

38. The Coalition Committee filed its first political committee report of contributions and expenditures (hereinafter “C-6 report”) on July 9, 1996. The Coalition Committee’s first report for the period of June 6 through July 5, 1996 reported only one transaction -- a single cash contribution in the amount of \$37,000 from the NRA. The Coalition Committee’s July 9, 1996 report did not report that any expenditures had been made or any in-kind contributions received.

39. Decision Management faxed Griffin a proposed budget for the Montana campaign against I-121 and proposed television ads prepared by the NRA’s advertising firm (Gannon) on July 1, 1996. The proposed budget suggested that \$1,607,125.00 be spent on the Montana campaign against I-121, including \$100,000.00 on radio advertising, \$440,725.00 on television advertising, \$450,000.00 on direct voter contact and \$260,000.00 on public relations and internal communications.

40. Decision Management wrote a “targeting report” memo to th NRA and Griffin on July 15, 1996 identifying those Montana counties that should be the focus of

the campaign against I-121. Copies of the memo were, in turn, distributed to the Coalition Committee officers. The targeting report included an analysis of Montana Congressional election results from 1988, 1990, 1992 and 1994.

41. The Chamber's July 15, 1996 newsletter announces that the Chamber "is leading the business community effort to oppose I-121, the initiative that proposes to raise Montana's minimum wage to one of the highest in the nation." The same article announces that "one of the hardest hit industries, the National Restaurant Association" has sent "initial funding to organize a small staff and begin an active campaign." The newsletter contained a solicitation from the Coalition Committee and a questionnaire and contribution pledge form entitled "Hurt My Business and My Employees!"

42. The Innkeepers contributed \$2,500 cash to the Coalition Committee on July 24, 1996.

43. The NRA sent the Coalition Committee a three-page list of "potential major donors" on July 30, 1996. The listing also included a handwritten notation "Montana goal: \$1,600,000."

44. Micone sent the NRA a memorandum on July 31, 1996 outlining campaign contribution and expenditure reporting requirements in Montana. Micone advised the NRA that if a national corporation gives money to the NRA and does not earmark the money for expenditure in Montana, the NRA then reports the amount spent in Montana to the Montana Commissioner of Political Practices as "being received from the NRA." Micone's memo includes a copy of the Montana rule governing incidental committee reporting (ARM 44.10.411).

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45. An August 1, 1996 memo from Micone to Doggett, Griffin and Owen discusses a change in a proposed newspaper ad and includes revised wording.

46. The NRA sent Micone a memo on August 6, 1996 indicating that the NRA was “building a network of CEO’s and top executives to help them raise the \$3-5 million for the national campaign.” The national campaign was part of the NRA’s national preparedness fund and monies raised in the national campaign were to be allocated among the five states facing minimum wage increase initiatives. Accompanying the memo was the NRA’s estimate of what an amount of \$5,000 up to \$1,000,000 would buy in terms of television time in Montana. For example, the NRA advised Micone that \$250,000 would buy four weeks on television in Billings, Missoula, Great Falls, Butte and Helena.

47. On August 6, 1996, the NRA sent the Coalition Committee a list of national restaurant chains. The listing included an identification of how many “units” for each national chain were located in Montana.

48. Decision Management sent Micone and Paladichuk a request for a state coalition update on August 7, 1996. The Coalition Committee responded by indicating that it intended to expand the Coalition membership and that a fundraising mailing would be “going out soon.”

49. The Coalition Committee filed its second C-6 report with the Commissioner of Political Practices on August 9, 1996. The second report covered the period from July 6 through August 5, 1996. The report included the \$2,500 cash contribution from the Innkeepers and an additional \$700 in cash contributions. None of the reported contributions included in-kind services.

50. The NFIB made a cash contribution of \$1,250 to the Coalition Committee on August 16, 1996.

51. Doggett briefed the Innkeepers' Board about the campaign against I-121 at the Innkeepers' August 26, 1996 meeting. Doggett told the Board that he was working on the Innkeepers' behalf with the Coalition Committee and that initial polling had revealed strong support for I-121. Doggett advised that the NRA had provided a professional consultant and other resources to oppose I-121 but opposition from Montana businesses would be a key element of the opposition campaign. The Board also discussed I-125 and I-122 but reconfirmed that it would only participate in the campaign against I-121.

52. An August 28, 1996 memo from Pepsico's Government Affairs office estimates what it would cost to cover the entire state of Montana with TV and radio ads for three weeks leading up to election day. The memo indicates that it would cost \$207,000 for television time and \$35,000 for radio time to blanket the state of Montana for three weeks.

53. The Coalition Committee recorded receipt of a \$29,500 in-kind contribution from the NRA on September 5, 1996.

54. The Coalition Committee filed its C-6 report for the period from August 6 through September 5, 1996 on September 10, 1996. The Coalition Committee's report lists numerous cash contributions including \$1,250 contributed by NFIB. The Coalition Committee's September 10, 1996 report does not list any in-kind contributions, including the \$29,500 in-kind contribution received from the NRA on September 5, 1996.

55. The Retail Association made a cash contribution of \$1,120 to the Coalition Committee on September 6, 1996.

56. The Retail Association's September 1996 newsletter declares that the Retail Association "is playing a key role in the effort to defeat I-121...." The same article announces that the Coalition Committee was formed "to fund an advertising campaign to defeat this well-intentioned, but terribly flawed idea." The Retail Association newsletter urges recipients of the newsletter to send checks to the Coalition Committee.

57. The Coalition Committee sent fundraising letters to major corporations such as J. C. Penney on or about September 19, 1996. The fundraising letter states that the Coalition Committee is being spearheaded by the Chamber, the Retail Association, the Innkeepers, the Food Distributors, NFIB and restaurants. The letter states that at least \$200-300,000 will be needed to "run an effective campaign."

58. The Retail Association contributed \$5,000 cash to the Coalition Committee on September 30, 1996.

59. The Coalition Committee paid Multi-Media Services \$50,000 for the purchase of radio time on October 1, 1996. This expenditure was reported in the Coalition Committee's October 21, 1996 C-6 report.

60. The Coalition Committee sent out a fundraising appeal entitled "URGENT! This is Our Final Appeal!" in late September or early October of 1996. The solicitation requested that a contribution be made to the Coalition Committee in the amount of \$40 per employee. The fundraising solicitation also included:

A. A description of a September 23, 1996 Lee Newspaper poll of 807 Montanans showing that I-121 would pass by a margin of 63-26% (11% undecided).

B. A listing of the Coalition's "Executive Committee" (the Chamber, the Retail Association, the Innkeepers, the food Distributors, the MRA and the NFIB).

C. A statement that Governor Racicot "believes that I-121 is bad for business and bad for Montana."

D. An announcement that the NRA has "purchased time for television ads" and that the Coalition Committee can "ensure every Montanan hears our message if we raise \$50,000 for radio."

61. The Coalition Committee recorded receipt of a \$100,000 in-kind contribution from the NRA on October 7, 1996. The NRA paid Multi-Media Services \$100,000 by check dated September 30, 1996 for the purchase of television time. The NRA check stub indicated the media buy was made on September 26, 1996.

62. A confidential October 8, 1996 memorandum from Decision Management to the Coalition Committee outlines proposed radio, television and newspaper ads to be run during the remainder of the campaign against I-121. The memorandum notes that \$155,000 will be spent on television ads, \$85,000 on radio time, and \$21,000 on newspaper ads and a "brushfire" poll. The memorandum also notes that none of the money will be spent on television/radio production because that cost has been paid for by the NRA. The memo indicates that the Coalition Committee will have to raise \$25,000 in addition to \$50,000 already raised to pay for the Coalition Committee's share of the anticipated \$261,000 expenditure slated to begin on October 15, 1996. Accompanying the memo is a complete listing of the advertising expenditures to be made in each Montana city.

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63. The NRA paid Multi-Media Services \$75,000 for television advertising time on October 10, 1996. The October 8, 1996 memo from Decision Management referenced in the preceding paragraph indicates two contributions by the NRA have already been made -- one for \$100,000 and another for \$75,000 (this latter contribution was made by the NRA's Preparedness Fund).

64. Multi-Media Services prepared a revised memo detailing media expenditures in Montana on October 15, 1996. The memorandum indicates that \$157,950 will be spent on television advertising and \$87,686 on radio advertising for the period from October 8 through November 4, 1996.

65. The Coalition Committee recorded receipt of a \$26,000 in-kind contribution from the NRA on October 16, 1996.

66. The Coalition Committee filed a C-6 report for the period from September 6 through October 16, 1996 on October 21, 1996. The Coalition Committee's C-6 report included the \$6,120 contributed by the Retail Association and the \$100,000 in-kind contribution from the NRA received during this reporting period. The C-6 report did not include the \$26,000 in-kind contribution received from the NRA on October 16, 1996 or the \$75,000 NRA purchase of television time on October 10, 1996. The Coalition Committee's report indicated that the total contributed by the NRA as of October 16, 1996 was \$137,000.

67. On October 17, 1996, the Coalition Committee paid Multi-Media Services \$8,354.20 for "media services." This expenditure was reported in the Coalition Committee's October 30, 1996 C-6 report.

68. The Retail Association made a \$5,000 contribution to the Coalition Committee on October 18, 1996. The Coalition Committee recorded receipt of the contribution on October 21, 1996.

69. On October 21, 1996, the Coalition Committee recorded receipt of the \$75,000 in-kind contribution made by the NRA for the purchase of TV ads on October 10, 1996.

70. On October 22, 1996, the Coalition Committee paid Fabrizio \$6,000 for polling and Multi-Media Services \$5,000 for media services. These expenditures were reported in the Coalition Committee's October 30, 1996 C-6 report.

71. By letter and amended reports dated October 24, 1996, the Coalition Committee advised the Commissioner of Political Practices that it had "inadvertently omitted reporting two in-kind contributions." Owen's letter to the Commissioner stated that the NRA "has occasionally made the services of a political consultant available to the Committee" but that the Coalition Committee's contact with the political consultant "has been sporadic and we had not received any bill or letter concerning the amount of the fee for his services." Owen's best estimate of the unreported in-kind contribution by the NRA political consultant "to this date is \$17,500." Owen also reported that the Coalition Committee had failed to report an additional amount for "media production" in the amount of \$38,000. Owen's letter was accompanied by the following amended reports:

A. An amended report for the period from August 6 through September 5, 1996 reported an in-kind contribution from the NRA of \$29,500.

B. An amended report for the period from September 6 through October 16, 1996 reported a \$26,000 in-kind contribution by the NRA.

72. The Coalition Committee's amended C-6 report filed on October 24, 1996 did not include the \$75,000 purchase of TV ads by the NRA on October 10, 1996.

73. The NRA paid Multi-Media Services \$88,000 on October 25, 1996 for a media buy made on October 24, 1996. A letter from the NRA to Griffin dated October 25, 1996 included a copy of the check to Multi-Media Services and stated that "this funding is going toward the purchase of an upcoming television media buy on behalf of the Coalition to Protect Small Business Jobs to defeat the minimum wage ballot initiative."

74. A flurry of faxes between Decision Management, Gannon, Griffin, Doggett, Johnson and Owen occurred on October 29 and 30, 1996. The faxes dealt primarily with new radio ads to be run by the Coalition Committee and transcripts of the ads being run by the proponents of I-121. Owen indicated in a note to Gannon that a restaurant owner in Missoula was willing to read the ad if needed.

75. The NRA sent Griffin a letter on October 29, 1996 congratulating Griffin on his hard work to defeat I-121. Accompanying NRA's letter was a tabulation of contributions made by other state restaurant associations in the amount of \$130,500. The letter also indicated that some of the other restaurant associations had "sent their donations to you directly."

76. The Coalition Committee filed its C-6 report for the period from October 17 through October 26, 1996 on October 30, 1996. The Coalition Committee's report includes the \$75,000 in-kind contribution made by the NRA for advertising on October

10, 1996. The Coalition Committee's report does not include the \$88,000 paid by the NRA to Multi-Media Services for the purchase of television time on October 25, 1996.

77. On November 3, 1996, Doggett reported to the Innkeepers' Board that the campaign against I-121 "is going as planned with strong financial support being provided by the National Restaurant Association."

78. Montana voters rejected I-121 by a substantial margin on November 5, 1996.

79. The Coalition Committee filed its post-election C-6 report for the period from October 27 through November 8, 1996 on November 8, 1996. The Coalition Committee's report included the following:

A. Contributions previously reported as being made by the Retail Association in the amount of \$11,120 were corrected to show that the contributions came from Wendy's of Montana; King Park Fast Food Corporation; Sears, Roebuck and Co.; and the Retail Association.

B. The \$88,000 in-kind contribution made by the NRA on October 25, 1996. The Coalition Committee recorded receipt of this in-kind contribution from the NRA on November 7, 1996.

80. The Retail Association's November 1996 newsletter celebrated the Coalition Committee's victory in defeating I-121. The Retail Association described the win as "an incredibly satisfying victory against what seemed like insurmountable odds" and that "luckily, the National Restaurant Association contributed over \$350,000 to buy advertising."

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81. The Chamber did not file any incidental political committee reports (“C-4 reports”) with the Commissioner of Political Practices regarding its activities in opposing I-121. The Chamber’s response to the Common Cause complaint alleges that it filed a letter and C-4 report with the Commissioner on June 1, 1998 but there is no record of the filing in the Commissioner’s official files. The letter and C-4 report estimate that the Chamber contributed between \$10-11,000 of in-kind services to the Coalition Committee during the campaign opposing I-121. The figure is based on Owen’s estimate that he spent 450 hours on I-121 campaign activities from February through November of 1996.

82. Owen provided substantial services to the campaign to defeat I-121 while being paid to serve as president of the Chamber. Owen was the most active member of the core group in developing and implementing the campaign opposing I-121. Owen was involved in every facet of the campaign against I-121. He reviewed and approved campaign ads, developed strategy, debated I-121 at public forums, wrote letters to editorial and business writers for Montana newspapers, wrote the Chamber’s newsletter articles opposing I-121, did opposition research, worked with the Coalition Committee staff on a daily basis (the Coalition Committee was housed in the Chamber offices), reviewed polling and focus group information collected by the NRA’s media consultants and served as the Coalition Committee’s treasurer. In the U. S. district Court trial concerning the constitutionality of I-125, Owen submitted an affidavit stating that he and the Chamber staff “ran the campaign against I-121, including preparation of position papers, advertising, soliciting contributions, and getting out the vote.”

83. The Retail Association filed a C-4 report with the Commissioner of Political Practices on November 1, 1996. The C-4 report listed a \$120 cash contribution made to the Coalition Committee on September 4, 1996. The Retail Association's C-4 report does not include any in-kind services provided by Griffin.

84. The MRA did not file a C-4 report with the Commissioner of Political Practices concerning any of Griffin's I-121 activities.

85. Griffin was one of the most active participants in the campaign against I-121. Griffin's I-121 duties were to serve as the coordinator between the Coalition Committee, the MRA, the Retail Association and the NRA in securing the substantial monetary and in-kind contributions made by the NRA to the campaign against I-121. Griffin was also involved in implementing and developing campaign strategy, reviewing and approving campaign advertising, reviewing polls and focus group information and service as chair of the Coalition Committee.

86. The Innkeepers did not file any C-4 reports with the Commissioner of Political Practices concerning in-kind services provided by Doggett during the campaign against I-121.

87. Doggett was involved in the campaign against I-121 from beginning to the end. Doggett reviewed polling and focus group information, approved advertising produced by the Coalition Committee and the NRA, and served as the Coalition Committee's co-chair. The Innkeepers' newsletters were only distributed to members and persons who requested a copy of the newsletters.

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88. The NFIB did not file any C-4 reports with the Commissioner of Political Practices regarding in-kind services provided by Johnson during the campaign against I-121.

89. Johnson served as the Coalition Committee's secretary and was an active participant in the strategy meetings for the campaign against I-121. He also reviewed polling and focus group information and proposed campaign ads, and prepared a membership poll and newsletter article concerning I-121. The membership poll and newsletter were only distributed to NFIB's members.

90. The Food Distributors did not file any C-4 reports with the Commissioner of Political Practices regarding in-kind services provided by Stevens. Stevens participated in strategy meetings with Owen, Griffin, Doggett and Johnson but Stevens did not debate I-121 or testify against the initiative at any public proceedings. Stevens did not write articles or other documents opposing I-121 for distribution to the Food Distributors' membership.

91. Several NRA staff members provided support services to the Montana core group and the Coalition Committee. The NRA staff provided copies of relevant minimum wage articles and studies, provided the names and addresses of the NRA's members for use in fundraising efforts, prepared a media kit for use in the Montana campaign, did research on minimum wage issues, coordinated the Montana campaign against I-121 with campaigns in other states, shared relevant opinion surveys and polling information from other states and made sure that the NRA's political consultants were responsive to the Coalition Committee. The NRA's C-4 reports did not include any in-kind services provided by the NRA staff to the campaign against I-121 in Montana.

92. The NRA paid Decision Management at least \$114,498.24 from March 25, 1996 through November 14, 1996 to provide political analysis and advice on minimum wage issues in Montana and other states. Of this amount, \$90,000 constituted the \$10,000 monthly “management/representation fee” paid in monthly installments beginning in March of 1996. A portion of each \$10,000 monthly fee was attributable to work performed on I-121 in Montana but it is not possible to determine the retainer amount attributable to the Montana I-121 campaign based on the records available on the date of this decision. It appears at least \$10,888.28 was paid to Decision Management for travel expenses to Montana between May and November of 1996.

93. The NRA paid Gannon at least \$254,314.01 to produce media advertisements opposing minimum wage initiatives in five states. At least \$52,995.59 of this amount was paid to Gannon for producing ads used in the Montana I-121 campaign as follows:

<u>Date Billed</u>	<u>Amount</u>
10/10/96	\$33,058.23
10/20/96	3,053.00
10/20/96	868.26
11/05/96	15,216.10
Subtotal	<u>\$52,995.59</u>

The NRA’s payments to Gannon included a \$5,000.00 monthly retainer to provide media advertising advice on I-121 and initiatives in other states. The first monthly retainer was paid to Gannon on April 11, 1996 and monthly retainer payments totaled \$40,000.00 in 1996. A portion of each monthly retainer was attributable to work performed on I-121 in Montana but it is not possible to determine the retainer amount

attributable to the Montana I-121 campaign based on the records available on the date of this decision.

94. The NRA paid Fabrizio \$100,790.00 to do polling in five states, including Montana, on May 14, 1996. Fabrizio was paid \$15,200.00 to poll 400 Montanans on May 2-4, 1996. Fabrizio also did polling and/or focus groups in Montana later in the I-121 campaign, but the NRA did not produce records concerning payments to Fabrizio for those services.

95. The NRA paid Multi-Media Services \$263,000 to purchase and place media advertising opposing I-121 in Montana during September and October of 1996. See Summary of Facts 61, 63, and 73.

96. Based on Coalition Committee reports indicating the NRA had made in-kind contributions totaling \$55,500, the Commissioner of Political Practices notified the NRA by letter dated October 24, 1996 that the NRA had to file C-4 reports as an incidental political committee. The NRA filed C-4 reports concerning its I-121 activities as follows:

A. On November 6, 1996, the NRA reported that it had made a \$100,000 cash payment to the Coalition Committee on "9/30/96" and a \$26,000 in-kind expenditure to Decision Management on "8-10/96." A separate C-4 report filed on November 6, 1996 indicated that the NRA had made a \$29,000 payment to Gannon on "10/96."

B. The NRA filed an amended C-4 on November 13, 1996 stating that the \$100,000 payment reported as being made to the Coalition Committee on November 6, 1996 was actually made to Decision Management on "9/30/96."

C. The NRA's November 18, 1996 C-4 report indicated that a \$75,000 payment had been made to Multi-Media Services on '10/10/96.'

D. A November 29, 1996 C-4 report indicated that an \$88,000 payment had been made by the NRA to Multi-Media Services on "10/25/96."

The Campaign Against I-125

97. I-125 was opposed by two political committees, the "Committee to Defend First Amendment Rights - Against I-125" ("First Amendment Committee") and the "Associations, Businesses, and Other Montanans Opposing I-125" ("Associations Committee"). David Owen was listed as a committee member for both political committees. Owen listed the Chamber's mailing address and telephone number as his address and phone number in the C-2 forms filed by both committees.

98. Retired Supreme Court Justice John Harrison served as treasurer for the First Amendment Committee and William E. Leary served as deputy treasurer and staff director. The First Amendment Committee raised and spent a total of \$81,647.93 in its campaign against I-125.

99. Steve Browning of the Helena law firm of Browning, Kaleczyc, Berry and Hoven served as the Associations Committee treasurer. Dennis Burr, Executive Director of the Montana Taxpayer's Association, served as the committee's campaign coordinator. The Associations Committee raised and spent a total of \$235,063.68 in its campaign against I-125. Of this amount, an ending balance of \$16,715.54 was transferred to the Chamber's Legal Defense Fund in July of 1997 for use in the Chamber's lawsuit challenging the constitutionality of I-125.

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100. The Chamber's May 6, 1996 newsletter described I-125 as an initiative designed to "deprive businesses a key privilege...the right to oppose issues, even those that do great harm." The article stated that if I-125 qualified for the November ballot, "the Chamber will lead the effort to oppose a proposition that serves no one but a few who seek to muzzle a free exchange of ideas." The Chamber newsletter was mailed to both members and nonmembers as described in Summary of Fact 11.

101. Owen wrote a newsletter article opposing I-125 for the August 1996 Missoula Area Chamber of Commerce. Owen's article was, with Owen's permission, ultimately used by the First Amendment Committee in its campaign against I-125. The article declares that the "Montana Chamber will be helping lead the fight against ...[I-125]" and urges readers to call him and "have your checkbook handy."

102. Owen participated in a debate opposing I-125 in Deer Lodge, Montana in the fall of 1996. During the same appearance, Owen opposed I-121 during a debate on the minimum wage initiative.

103. Owen was appointed to the committee preparing the Voter Information Pamphlet arguments against I-125 in early June of 1996. The appointment was made by Secretary of State Mike Cooney. Owen prepared Voter Information Pamphlet arguments at the request of the Secretary of State through early August of 1996.

104. Owen's activities in organizing and participating in the principal committee campaigns against I-125 consisted of serving on both principal committee steering committees, receiving weekly campaign updates, attending planning and organizing meetings for both campaigns, holding the organizational meetings for both campaigns at the Chamber offices and helping with initial organizational plans. The Chamber

estimates that the time spent by Owen on these activities was a maximum of twelve (12) hours.

105. In the U.S. District Court trial concerning the constitutionality of I-125, Owen submitted an affidavit stating that the Chamber “advocated a position on I-125 and assisted in organizing meetings, forming a coalition, and getting out the vote during the 1996 campaign.”

106. The Chamber did not file a C-4 report with the Commissioner of Political Practices concerning any of the Chamber’s I-125 activities.

107. The First Amendment Committee did not report any contributions, cash or in-kind, from the Chamber or Owen. The Committee did report significant in-kind contributions from various businesses and organizations for office rent, postage, accounting services, copies, printing, distribution of literature and personnel.

108. The Associations Committee did not report any contributions, cash or in-kind, from the Chamber. The Committee did report a five dollar (\$5.00) cash contribution from Owen. The Associations Committee also reported in-kind contributions from various businesses for professional services and listed as “unpaid debts” fundraising services provided by Browning. Browning was ultimately paid by the Committee for his fundraising services.

STATEMENT OF FINDINGS -- I-121

I. Applicable Law

The essential elements of Montana’s laws and rules requiring public disclosure of contributions and expenditures made to support or oppose candidates or ballot issues have been in place since 1975 (see Section 13, Chapters 35, 36 and 37, Montana Code

Annotated, hereinafter “MCA”). When Montana enacted a wholesale revision of its campaign finance reporting laws in 1975, the Montana Legislature embraced the full public disclosure of campaign-related spending as follows:

It is the purpose of this act to establish clear and consistent requirements for the full disclosure and reporting of the sources and disposition of funds used in Montana to support or oppose candidates, political committees, or issues....(Section 1, Chapter 480, Laws of 1975.)

For twenty years before the 1996 Montana elections, this State’s campaign finance disclosure laws and rules required that contributions and expenditures to support or oppose ballot issues had to be timely and accurately reported. The terms “contribution” and “expenditure” are defined in Section 13-1-101, MCA, as follows:

(6) (a) “Contribution” means:

(i) an advance, gift, loan, conveyance, deposit, payment, or distribution of money or anything of value to influence an election;

(ii) a transfer of funds between political committees;

(iii) the payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee....

(10) (a) “Expenditure” means a purchase, payment, distribution, loan, advance, promise, pledge, or gift of money or anything of value made for the purpose of influencing the results of an election....

Section 13-1-101(12), MCA, defines a “political committee” as:

...a combination of two or more individuals or a person other than an individual who makes a contribution or expenditure:

(a) to support or oppose a candidate or a committee organized to support or oppose a candidate or a petition for nomination; or

(b) to support or oppose a ballot issue or a committee organized to support or oppose a ballot issue; or

(c) as an earmarked contribution.

Political committees are required to timely and accurately report in-kind and monetary contributions made to support or oppose ballot issues (see, e.g., Sections 13-37-226, 228, 229, 230, MCA, and Administrative Rules of Montana, hereinafter “ARM,” 44.10.321, 323, 507, 511, 513, 515, 519, 525, 531, 533, and 535). These reporting obligations were in place during the 1996 elections.¹ Specifically, the Coalition Committee and the core group of individuals and groups opposing I-121 were required by Montana law to timely and accurately report contributions and expenditures during the 1996 campaign as follows:

A principal committee organized to support or oppose a 1996 statewide ballot issue was required to file quarterly reports in 1995 if the committee was receiving or expending funds (Section 13-37-226(2)(a), MCA). If funds were not received or expended to support or oppose a statewide initiative until calendar year 1996, the principal committee was required to file monthly reports beginning on March 10, 1996 (Section 13-37-226(2)(b), MCA). Additional reporting obligations applied to contributions received or expenditures made after September 10, 1996 (Section 13-37-226(2)(c), (d), (e) and (f), MCA), including a requirement that contributions of \$500.00 or more be reported within 24 hours if the contribution is received within ten (10) days before the election.

The initial reports filed by all political committees, including principal committees, had to include “all contributions received or expenditures made by a candidate or

political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report ..." (Section 13-37-228(1), MCA).

Sections 13-37-229 and 230, MCA, require that political committee reports include such information as the full names and mailing addresses of contributors making contributions of \$35 or more; the aggregate contributions made by each contributor; the amount of any loans, debts or obligations; the amount of money transferred from one political committee to another; and any other information required to "fully disclose the sources of funds used to support or oppose candidates or issues."

Extensive rules have been adopted further defining when and how contributions and expenditures must be reported. The rules governing reports filed by the campaign treasurer of a political committee (ARM 44, Sub-Chapter 5) have been in place since at least 1976 and only two of the rules in Sub-Chapter 5 have been amended since 1976 (the latest amendment was made to ARM 44.10.501 in 1988, eight years before the 1996 elections). The rules in ARM 44, Sub-Chapter 5 specify that a cash contribution is a contribution on the date it is received (ARM 44.10.511(1)). An in-kind contribution is a contribution on the date consideration is received (Id.). All contributions must be reported "for the reporting period during which it is received" (ARM 44.10.511(4)). ARM 44, Sub-Chapter 5 contains other detailed reporting requirements for in-kind contributions and expenditures, earmarked contributions, transfers between political committees and debts and obligations incurred by political committees.

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¹ Some of the administrative rules cited in this decision were amended after the 1996 elections (e.g., 44.10.321 and 323), but the amendments did not change the fundamental reporting requirements

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II. The Chamber's Confusion Defense

The Chamber's written response to the Common Cause complaint alleges, in part, that Montana's campaign finance reporting requirements were vague and confusing in 1996. The Chamber's "confusion" argument was true for incidental political committees before mid-September of 1996. My predecessor, Commissioner Ed Argenbright, expressly acknowledged that his actions before mid-September of 1996 had created confusion about the reporting obligations for incidental political committees. See Commissioner Argenbright's decisions in *Matter of the Complaint Against Montanans for Clean Water, Northern Plains Resource Council and Public Education For Water Quality Project*, April 29, 1997 (hereinafter "MCW/NPRC Decision"), at p. 15; and *Matter of the Complaint Against Montanans for Common Sense Water Laws/Against I-122*, April 30, 1998 (hereinafter "MCSWL II Decision"), at pp. 4-8. However, Commissioner Argenbright also ruled that whatever confusion may be existed about when incidental committees had to file C-4 reports, principal committees involved in the 1996 ballot issue campaigns had a "continuing and unambiguous obligation to timely and accurately report all contributions and expenditures." MCSWL II Decision, at pp. 7, 71 and 74-80. I concur with Commissioner Argenbright's conclusion that a principal committee's obligation to timely and accurately report contributions and expenditures made by incidental committees during the 1996 campaign was clear, unequivocal and unambiguous.

Commissioner Argenbright also addressed the reporting obligations of incidental committees after mid-September of 1996 in the MCSWL II Decision and *Matter of the*

discussed in this decision.

Complaint Against Montanans for Clean Water and the Orvis Company, Inc., February 27, 1997 Summary of Facts and Statement of Findings (hereinafter “MCW/Orvis Decision”). In mid-September of 1996, the Commissioner’s “interim policy” was to notify incidental committees of their obligation to file C-4 reports. The Commissioner’s notice via letter and C-4 report form advised incidental committees that they had to file a report of contributions and expenditures made within five (5) days after receiving notice. Commissioner Argenbright ultimately determined that his “interim policy” (report within five (5) days of receiving notice) was unenforceable, but ARM 44.10.411 as it existed in 1996 required incidental committees to file reports twelve (12) days before the election and not more than twenty (20) days after the election. This latter requirement became the basis for enforcement actions filed against MCW, Orvis, MCSWL and several of the incidental committees supporting MCSWL and the settlements that resulted from those enforcement actions. See MCW/Orvis, at pp. 4-7; MCSWL II Decision, at pp. 69-71; Argenbright v. Montanans for Clean Water/For I-122, First Judicial District, Cause No. 9700357, December 31, 1998 Settlement Stipulation; and MCSWL II Decision, December 30, 1998 Settlement Stipulation. The NRA, the Innkeepers, the Chamber, the Food Distributors and NFIB did not comply with this fundamental reporting requirement for incidental committees. Even the NRA, which ultimately filed its first C-4 report on November 6, 1996, one day after the general election, did not timely and accurately file C-4 reports.

It is also necessary to address at this point the Chamber’s assertion that its President, David Owen, was confused about the reporting obligations applicable to the Chamber and the principal committee which he served as treasurer. Other than the

acknowledged confusion about the Chamber's incidental committee reporting obligations before mid-September of 1996, the facts in this matter do not support Mr. Owen's confusion claim. In fact, there is strong evidence that Owen, the Coalition Committee's officers and the NRA may have been either grossly negligent or intentionally failed to accurately or timely report significant expenditures and contributions made to oppose I-121. The following facts make it implausible to believe that Owen, the Chamber and the Coalition Committee's officers were confused about Montana's campaign finance reporting requirements:

First, the Coalition Committee was clearly apprised of its duty to report all in-kind and cash contributions as early as June of 1996. The June 21, 1996 letter from the Commissioner's office acknowledging receipt of the Coalition Committee's organizational statement expressly reminds Owen of his duty to fully report contributions and expenditures, including those made before the committee's formation.

Second, Owen, Doggett, Johnson and Griffin and the groups they represented had been involved in numerous other candidate and initiative campaigns before 1996. The NRA's political consultant reported in May of 1996 that one of the strengths of the Montana core group opposing I-121 was that the group had previously worked together to defeat the bottle bill and cigarette tax initiatives.

Third, the principal committee supporting I-121 (the Committee For a Livable Wage -- \$2 by 2000 campaign) filed its organizational statement on February 21, 1996 and its first C-6 report on March 6, 1996. The core group opposing I-121 had been monitoring the I-121 proponents' activities since September of 1995. It is inconceivable that Owen and the politically astute core group members did not know that their

coordinated actions against I-121 were reportable long before the Coalition Committee chose to file its organizational statement with the Commissioner on June 20, 1996 and its first C-6 report on July 9, 1996.

Fourth, David Owen was a member of both committees formed to oppose I-125 at the same time he was leading the fight against I-121. One of the I-125 committees, the First Amendment Committee, was the target of a Common Cause complaint in September of 1996. The complaint alleged, in pertinent part, that the committee had failed to include in its initial report all contributions and expenditures made before the committee was formally organized. Commissioner Argenbright concluded that the I-125 committee on which Owen served had failed to timely and accurately report certain debts and obligations for polling, legal and administrative services. See October 11, 1996 Summary of Facts and Statement of Findings in *Matter of the Complaint Against the Committee to Defend First Amendment Rights/Against I-125*, at pp. 6 and 7. Commissioner Argenbright ultimately collected a \$500 civil penalty from the First Amendment Committee and the matter received extensive press coverage.

Fifth, the Coalition Committee was advising the NRA about Montana's campaign finance reporting requirements in July of 1996 (see Summary of Fact 44). This Commissioner can only wonder how the Coalition Committee could be reviewing applicable reporting statutes and rules for the NRA and not be aware of the reporting obligations applicable to the Coalition Committee.

Sixth, any claim of confusion about the obligation of the Coalition Committee and its treasurer to timely and accurately report the NRA's significant contributions and expenditures must be rejected based on a review of the Coalition Committee's own

records. The Coalition Committee's recording of contributions and expenditures reflects a pattern and practice of inaccurate and untimely reporting of the NRA's significant financial expenditures to defeat I-121. Simply stated, it appears the Coalition Committee timely and accurately reported contributions received from other contributors during each reporting period, but the NRA's significant in-kind expenditures were never accurately or timely reported, as illustrated by the following:

A. The Coalition Committee's September 10, 1996 C-6 report for the period from August 6 through September 5, 1996 listed a \$37,000 cash contribution from the NRA. The September 10, 1996 report did not include a \$29,500 in-kind NRA contribution which the Coalition Committee acknowledged receiving on September 5, 1996. The Coalition Committee should have reported, according to its own records, total contributions/expenditures by the NRA of \$66,500 in its September 10, 1996 C-6 report. The Coalition Committee failed to timely and accurately report \$29,500 of contributions/expenditures by the NRA on September 10, 1996.

B. The Coalition Committee's October 21, 1996 C-6 report for the period from September 6, 1996 through October 16, 1996 reported total contributions from the NRA of \$137,000. During this reporting period, the NRA made expenditures and/or in-kind contributions of \$100,000 on September 26, 1996 (the Coalition Committee recorded receipt of this in-kind contribution on October 7, 1996); \$75,000 on October 10, 1996 (the Coalition Committee noted receipt of this in-kind contribution on October 21, 1996); and \$26,000 on October 16, 1996 (the Coalition Committee acknowledged receipt of this in-kind NRA contribution on October 16, 1996). The Coalition Committee was well aware that the NRA had made or was going to make

significant expenditures during the September 6 - October 16, 1996 reporting period. The Coalition Committee should have reported total contributions/expenditures by the NRA of \$267,500 in its October 21, 1996 C-6 report. The Coalition Committee failed to timely and accurately report \$130,500 of contributions/expenditures by the NRA on October 21, 1996.

C. The Coalition Committee filed an amended C-6 report for the period from September 6 through October 16, 1996 on October 24, 1996. The Coalition Committee's amended report indicates that total NRA contributions/expenditures for this period were \$192,500. The Coalition Committee should have reported total NRA contributions/expenditures of \$267,500. The amended report understates the total NRA contributions/expenditures for the period ending October 16, 1996 by \$75,000.

D. The Coalition Committee's October 30, 1996 C-6 report for the period from October 17 through October 26, 1996 reported total contributions from the NRA of \$212,000. The NRA paid \$88,000 for television ads opposing I-121 on October 25, 1996. The Coalition Committee recorded receipt of this \$88,000 contribution/expenditure on November 7, 1996, one day after the 1996 general election. The Coalition Committee should have reported total contributions/expenditures by the NRA of \$355,500 in its October 30, 1996 C-6 report. The Coalition Committee failed to timely and accurately report \$143,500 of contributions/expenditures by the NRA in the October 30, 1996 report.

E. Neither the Coalition Committee nor the NRA ever reported the NRA's expenditures for minimum wage polling information used in the Montana I-121 campaign. The Coalition Committee did report a \$6,000.00 payment to Fabrizio for

“survey” work on October 22, 1996; however, the \$15,200.00 paid to Fabrizio by the NRA for Montana polling on May 2-4, 1996 was never reported by either the Coalition Committee or the NRA. Similarly, the Coalition Committee and the NRA did not report other polling work done by Fabrizio in Montana or polling work done nationally but used in the Montana I-121 campaign.

F. Pages 39 and 40 of this decision discuss two in-kind expenditures made by the NRA and recorded as in-kind contributions by the Coalition Committee on September 5 and October 16, 1996, respectively. The September 5, 1996 \$29,500 in-kind contribution from the NRA was reported in the NRA’s November 6, 1996 C-4 report as a payment to Gannon on “10/96.” The October 16, 1996 \$26,000 in-kind contribution from the NRA was reported in the NRA’s November 6, 1996 C-4 report as a payment to Decision Management on “8-10/96.” The total amount of these in-kind contributions is \$55,500. Records provided by the NRA indicate that payments to Gannon and McCarthy for work specifically identified as relating to the Montana campaign exceeded \$63,000. This figure does not include any allocation of the \$15,000 monthly retainer fees paid to Decision Management and Gannon for work related to the I-121 campaign (total payments to Decision Management and Gannon in 1996 exceeded \$368,000).

These facts strongly suggest that the Coalition Committee and the NRA engaged in conduct to avoid accurate and timely disclosure of the NRA’s financial involvement in the campaign against I-121. The Coalition Committee was coordinating every aspect of the I-121 campaign with the NRA. The Coalition Committee was receiving copies of the checks being written by the NRA to purchase media advertising. The Coalition Committee was receiving strategy memos containing detailed documentation of the

money being spent and services being provided by the NRA's campaign team. Despite the constant coordination with the NRA, the Coalition Committee consistently failed to timely and accurately report significant monetary contributions/expenditures being made by the NRA.

III. The In-Kind Contribution and Expenditure Issue

The Chamber and the Coalition Committee's officers have stated that they were unaware that the services they provided to the I-121 campaign while being paid to provide such services by their respective employers were reportable in-kind contributions under Montana law. It is difficult to understand how there could be any confusion about this issue. The definition of "contribution" in Section 13-1-101 (6)(a)(iii), MCA, is clear and unequivocal. The "payment by a person other than a candidate or political committee of compensation for the personal services of another person that are rendered to a candidate or political committee" is expressly defined as a contribution under Section 13-1-101(6)(a), MCA. Owen, Doggett, Griffin, Johnson and Stevens were being paid by their respective employers to develop and implement the campaign against I-121. The NRA was paying certain members of its staff and a political consulting team to develop and implement the campaign against I-121. The I-121 actions of Owen, Doggett, Griffin, Johnson, Stevens and their employers were coordinated with the NRA's activities. These individual and groups formed the Coalition Committee. The Coalition Committee, the Chamber, the Retail Association, the Innkeepers, the MRA, the NFIB, the Food Distributors and the NRA failed to report the value of substantial in-kind staff services through the campaign against I-121.

The Chamber's purported June 1998 C-4 filing estimated that the value of Owen's services to the I-121 campaign was \$10-11,000 based on 450 hours of work. The purported filing provides no other details and is inadequate on its face. To provide full disclosure of the value of such services, the value must include total compensation paid, including benefits, travel expenses, bonuses or other supplemental payments. It appears the Chamber's estimate is based on salary only and does not include benefits or travel expenses paid to Owen for performing services to the campaign against I-121.

IV. The Initial Coalition Committee Reporting Obligations

Sections 13-37-226 and 228, MCA, imposed clear and unambiguous reporting requirements on the Coalition Committee in 1996, including when an initial report had to be filed and what had to be included in the first report. The core group was coordinating the campaign against I-121 beginning in the fall of 1995. Section 13-37-226(2)(a), MCA, requires that political committees organized to support or oppose statewide ballot issues must file an initial report "beginning with the calendar quarter in which funds are received or expended during the year or years prior to the election year that an issue ... is expected to be on the ballot." The language of Section 13-37-226(2)(a), MCA, signals an intent not to trigger the filing of an initial report so long as individuals and groups are involved in pre-initiative strategy work limited to in-kind contributions and expenditures (no receipt or expenditure of funds). Based on the facts of this matter, the core group was not required to file a C-6 report in 1995 because its strategy work was limited to in-kind services provided by the core group's paid staff. Beginning in calendar year 1996, however, the core group's reporting obligations were precisely spelled out in

Sections 13-37-226(2)(b)-(f), MCA. The core group should have filed an initial report on or before March 10, 1996 in compliance with Section 13-37-226(2)(b), MCA.

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When the first report for a statewide ballot issue committee is filed, Section 13-37-228(1), MCA, dictates what must be included in the initial C-6 report. The Coalition Committee's first C-6 report violated the express requirements of Section 13-37-228(1), MCA. The Coalition Committee's initial report should have included "all contributions received or expenditures made by a candidate or political committee prior to the time that a person became a candidate or a political committee as defined in 13-1-101 until the fifth day before the date of filing of the appropriate initial report...." The language of Section 13-37-228(1), MCA, required that the Coalition Committee's initial C-6 report include all contributions and expenditures, both monetary and in-kind, made before the Coalition Committee was required to file its initial report by Section 13-37-226 (2), MCA. The Coalition Committee's July 9, 1996 report only included the \$37,000 seed money contribution from the NRA. The initial report did not include any of the in-kind staff services provided by the Chamber, the Innkeepers, the MRA, the Retail Association, the NFIB, the Food Distributors or the NRA. The July 9, 1996 report did not include the NRA's payments to its political consultants beginning on March 25, 1996 or the payments to Fabrizio for the Montana polling on May 2-4, 1996.

V. The Chamber's Late Reporting

The Chamber's response to this complaint asserts that the Chamber's purported C-4 filing in June of 1998, twenty months after the vote on I-121, should be considered a mitigating factor. There is no evidence in the Commissioner's files that the 1998 filing

was ever made. Even if it had been filed, such a tardy filing cannot be a mitigating factor in light of the persistent and serious reporting violations described in this decision.

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Montana's commitment to full disclosure of campaign financing can only be achieved if contributions and expenditures are accurately and timely reported. *Accurate plus timely reporting of contributions and expenditures equals full disclosure.* Nothing less is acceptable under Montana Law. Late filings before an election will be considered as a mitigating factor depending on the severity of the violation; however, late filings after an election involving significant and persistent violations like those described in this decision will not be given any credence.

This Commissioner makes no judgment about whether timely and accurate reporting of the NRA's full involvement in the I-121 campaign would have affected the outcome of the election. This Commissioner will, however, vigorously enforce the right of Montana voters to know when an organization, such as the NRA, is making significant expenditures to influence voters' opinions in Montana. Campaign finance reports that did not timely and accurately report the NRA's involvement in the I-121 campaign do not constitute full disclosure as required by Montana law.

The Coalition Committee, the NRA, the Retail Association, the MRA, the Innkeepers, the Chamber, the Food Distributors and NFIB failed to timely and accurately report contributions and expenditures opposing I-121. The Coalition Committee should have filed its first C-6 report at least three months earlier than it did in 1996. The NRA's monetary and in-kind expenditures to defeat I-121 were under-reported throughout the 1996 campaign against I-121. The NRA and the Coalition Committee failed to report

significant expenditures made by the NRA to oppose I-121. The Coalition Committee, the NRA, the Innkeepers, the MRA, the Retail Association, the Food Distributors, the NFIB and the Chamber failed to report substantial staff time allocated to the campaign against I-121. None of the campaign finance reports filed by the Coalition Committee, the NRA or any of the core group members accurately or timely disclosed the contributions and expenditures made to defeat I-121.

VI. Membership Mailings

The Chamber's newsletters opposing I-121 were mailed unsolicited to nonmembers (see Summary of Fact 11). The unsolicited mailing of membership newsletters containing articles opposing I-121 to nonmembers falls outside of the membership mailing exemption in Sections 13-1-101(6)(b)(iii) and 10(b)(iv), MCA. See also MCSWL II Decision at pp. 87-90. Accordingly, the cost of producing and distributing the Chamber's I-121 newsletters is a reportable contribution/expenditure for both the Chamber and the Coalition Committee.

There is no evidence that membership communications opposing I-121 were distributed unsolicited to nonmembers by the Retail Association, the Innkeepers, NFIB or the Food Distributors.

VII. Preparation of Arguments for the Voter Information Pamphlets

Common Cause alleges that the participation of Owen, Griffin and Doggett in the preparation of Voter Information Pamphlet arguments against I-121 is a reportable campaign expense. Owen, Doggett and Griffin were appointed by the Montana Secretary of State to prepare the arguments against I-121. Participation in a legislatively created process for the purpose of educating Montana voters about ballot

issues is a valuable and essential part of Montana's electoral process. The primary purpose of the Voter Information Pamphlet is to inform voters (pro and con) about ballot

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issues. Participation in a state-mandated voter education effort is non an in-kind contribution.

STATEMENT OF FINDINGS -- I-125

Most of the focus of this investigation involved the campaign against I-121 because significant I-121 contributions and expenditures were not accurately and timely reported. By contrast, the initial investigation of the Chamber's involvement in the I-125 campaign did not reveal widespread and significant violations. Accordingly, this decision is limited to a determination that the Chamber, the First Amendment Committee and the Associations Committee failed to timely and accurately report in-kind contributions/expenditures made by the Chamber as set forth in Summary of Facts 100-104. These in-kind services should have been accurately and timely reported by the First Amendment Committee, the Associations Committee and the Chamber for the reasons set forth on pages 32-43, parts I-III, and 46, part VI.

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CONCLUSION

Based on the preceding Summary of Facts and Statement of Findings, there is substantial evidence to conclude that the following entities violated Montana's campaign finance reporting and disclosure laws and rules and that a civil penalty action under Section 13-37-128, MCA, is warranted:

- The Coalition to Protect Small Business Jobs -- Opposing I-121
- The Montana Chamber of Commerce
- The Montana Retail Association
- The Montana Restaurant Association
- The Montana Innkeepers Association
- The Montana Food Distributors Association
- The National Federal of Independent Business
- The National Restaurant Association
- The Committee to Defend First Amendment Rights - Against I-125
- Associations, Business and Other Montanans Opposing I-125

Dated this _____ day of June, 2000.

Linda L. Vaughey
Commissioner